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Attorneys for FOUGHT & COMPANY, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

THE UNITED STATES OF AMERICA, for
the use and benefit of The Erection
Company, Inc.,

Plaintiff,

v.

TRAVELERS CASUALTY & SURETY
COMPANY OF AMERICA, a Connecticut
Surety corporation; LIBERTY MUTUAL
INSURANCE COMPANY, a
Massachusetts Surety corporation; and
FOUGHT & COMPANY, INC., an Oregon
corporation,

Defendants.

CASE NO. 5:15-cv-00125-PSG

STIPULATION TO RELATE CASES
~~PROPOSED~~ ORDER

Walsh/DeMaria Joint Venture V, Walsh Construction Company, The Walsh Group Ltd., DeMaria Building Company, Inc., (collectively "Walsh") Travelers Casualty and Surety Company of America ("Travelers"), Liberty Mutual Insurance Company ("Liberty"), J.R. Conkey & Associates, Inc. ("Conkey"), Fought & Company, Inc. ("Fought") and The Erection Company ("TEC") (all collectively referred to as the "Parties"), by and through their respective counsel of record herein, hereby stipulate as follows:

1. On or about July 24, 2014, Conkey commenced an action entitled *J.R. Conkey v. Walsh DeMaria Joint Venture V. et al.* (N.D. Cal.) Case No. 5:14-cv-03360-

1 PSG ("Conkey Action") by filing a complaint in the United States District Court for the
2 Northern District of California, including a cause of action for recovery on Miller Act
3 Payment Bond, pursuant to 40 U.S.C. §§ 3131-3134, relating to monies allegedly owed
4 for work performed at a Veterans Administration ("VA") hospital in Palo Alto, California
5 (the "Project").

6 2. On or about September 30, 2014, Fought commenced an action entitled
7 *Fought v. Walsh DeMaria Joint Venture V. et al.* (N.D. Cal.) Case No. 5:14-cv-04401-HRL
8 ("First Fought Action") by filing a complaint in the United States District Court for the
9 Northern District of California, including a Miller Act Payment Bond claim for relief,
10 pursuant to 40 U.S.C. §§ 3131 et seq., relating to monies allegedly owed for work
11 performed on the Project.

12 3. On or about December 23, 2014, Fought commenced a second action
13 entitled *Fought v. Walsh DeMaria Joint Venture V. et al.* (N.D. Cal.) Case No. 5:14-cv-
14 05600-HRL ("Second Fought Action") by filing a complaint in the United States District
15 Court for the Northern District of California, including a Miller Act Payment Bond claim for
16 relief, pursuant to 40 U.S.C. §§ 3131 et seq., relating to monies allegedly owed for work
17 performed on the Project;

18 4. As set forth in the parties' stipulation dated January 8, 2015, the Conkey
19 Action, First Fought Action and Second Fought Action are all related within the meaning
20 of Civil Local Rule 3-12, because the actions concern substantially the same parties and
21 transaction or event. Accordingly, on January 8, 2015, the Court ordered the Conkey
22 Action, First Fought Action, and Second Fought Action related.

23 5. On or about January 9, 2015, TEC commenced an action entitled *The*
24 *Erection Company v. Travelers Casualty & Surety Company of America, et al.* (N.D. Cal.)
25 Case No. 5:14-cv-00125-PSG ("TEC Action") by filing a complaint in the United States
26 District Court for the Northern District of California that included a Miller Act Payment
27 Bond claim for relief, pursuant to 40 U.S.C. §§ 3131 et seq., relating to monies allegedly
28 owed for work performed on the Project.

1 6. The TEC Action is related to the Conkey Action, First Fought Action and
2 Second Fought Action. The actions concern substantially the same parties because
3 Fought, Travelers and Liberty are all parties to the First Fought Action, Second Fought
4 Action and TEC Action. Furthermore, the actions concern substantially the same
5 transaction or event because they all arise from work on the same Project stemming from
6 contracts between Walsh and the Veterans Administration, and they all include claims
7 being made on the same Miller Act bonds issued by Travelers and Liberty.

8 7. There will be unduly burdensome duplication of labor and expense and
9 conflicting results if the cases are conducted before different judges because the
10 payment issues are substantially the same in the Second Fought Action and TEC Action
11 and because they concern substantially the same parties, similar facts and the same law.

12 8. The Parties herein stipulate and seek an order relating the TEC Action with
13 the Conkey Action, First Fought Action and Second Fought Action.

14
15 **IT IS SO STIPULATED.**
16

17 DATED: March 27, 2015

OLES MORRISON RINKER & BAKER, LLP

18
19 By: 

MEGHAN A. DOURIS
CATHERINE W. DELOREY
Attorneys for THE ERECTION COMPANY

22 DATED: March 27, 2015

HANSON BRIDGETT LLP

23
24 By: 

ROBERT W. O'CONNOR
JOHN W. KLOTSCHKE
Attorneys for FOUGHT & COMPANY, INC.

1 DATED: March 30, 2015

MARKS, FINCH, THORNTON & BAIRD, LLP

2
3 By: 

4 DAVID, S. DEMIAN
5 JEFFREY B. BAIRD
6 CHRISTOPHER R. SILLARI
Attorneys for J.R. CONKEY & ASSOCIATES,
INC.

7 DATED: March 30, 2015

NEWMeyer & DILLON, LLP

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9 By: 

10 J. BRIAN MORROW
11 Attorneys for WALSH/DEMARIA JOINT
12 VENTURE V, WALTH CONSTRUCTION
COMPANY, THE WALSH GROUP LTD. and
DEMARIA BUILDING COMPANY, INC.

13 DATED: March 30, 2015

CORFIELD FELD LLP

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15 By: _____

16 MICHAEL A. CORFIELD
17 NATLIE M. KELLOGG
18 Attorneys for TRAVELERS CASUALTY AND
19 SURETY COMPANY OF AMERICA and
20 LIBERTY MUTUAL INSURANCE COMPANY
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9 By: _____

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12 VENTURE V, WALTH CONSTRUCTION
COMPANY, THE WALSH GROUP LTD. and
DEMARIA BUILDING COMPANY, INC.

13 DATED: March 30, 2015

CORFIELD FELD LLP

16 By: _____

17 MICHAEL A. CORFIELD
18 NATLIE M. KELLOGG
Attorneys for TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA and
LIBERTY MUTUAL INSURANCE COMPANY

PROPOSED ORDER

THE COURT, HAVING REVIEWED AND CONSIDERED THE FOREGOING STIPULATION, AND GOOD CAUSE APPEARING THEREFOR, HEREBY ORDERS that the cases entitled *The Erection Company v. Travelers Casualty & Surety Company of America, et al.* (N.D. Cal.) Case No. 5:15-cv-00125-PSG, be deemed related to the cases entitled *J.R. Conkey v. Walsh DeMaria Joint Venture V. et al.* (N.D. Cal.) Case No. 5:14-cv-03360-PSG, *Fought v. Walsh DeMaria Joint Venture V. et al.* (N.D. Cal.) Case No. 5:14-cv-04401-PSG, and *Fought v. Walsh DeMaria Joint Venture V. et al.* (N.D. Cal.) Case No. 5:14-cv-05600-PSG, including related counter-claims and cross-claims, pursuant to L.R. 3-12 because the actions concern substantially the same parties, transaction or event and it appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges.

IT IS SO ORDERED.

Dated: April 1, 2015


Magistrate Judge Paul S. Grewal